

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 CR 889 (RMB)

6 JAMES SMITH,

7 Defendant.
-----x

8 New York, N.Y.
9 July 27, 2016
10 2:45 p.m.

11 Before:

12 HON. RICHARD M. BERMAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
18 JUSTINA GERACI
19 Assistant United States Attorney

20 MOSKOWITZ & BOOK LLP
21 Attorneys for Defendant
22 BY: AVRAHAM MOSKOWITZ

23 SEWARD & KISSEL LLP
24 BY: RITA GLAVIN

25 ALSO PRESENT: NORA ELLINGSEN, INTERN

1 THE COURT: We are here, as you know, today for
2 sentencing. The rules of sentencing have changed dramatically
3 over the last eight years or so as a result of Supreme Court
4 decisions and decisions of the Second Circuit Court of Appeals.

5 The upshot of these changes is that the United States
6 Sentencing Guidelines are no longer mandatory. What sentencing
7 courts do instead -- and what I have done prior to coming out
8 on the bench today -- is to review the factors found at 18 U.S.
9 Code, Section 3553(a), which include but are not limited to the
10 nature and the circumstances of the offense, the history and
11 characteristics of the defendant, and the need for the sentence
12 imposed to accomplish the following objectives:

13 One is reflecting the seriousness of the offense.
14 Another is promoting respect for the law. Another is providing
15 a just punishment for the offense. Another is to afford
16 adequate deterrence to criminal conduct. Yet another is to
17 protect the public from further crimes and also provide the
18 defendant with needed educational or vocational training,
19 medical or mental health counseling, or other correctional
20 treatment in the most effective manner.

21 In doing all that, we look at the kinds of sentences
22 that are available, the kinds of sentences and the sentencing
23 range established in the United States Sentencing Guidelines,
24 as well as any policy statements issued by the United States
25 Sentencing Commission.

1 We seek to avoid unwarranted sentence disparities
2 among similarly situated defendants and, in appropriate cases,
3 to provide for restitution.

4 We start with a sentencing guidelines analysis even
5 though as I said, the guidelines are no longer mandatory. In
6 this case, the sentencing guidelines range is 360 months to
7 life imprisonment. Plus there's a 10-year statutory mandatory
8 minimum consecutive sentence with respect to Count Three. The
9 offense level is 40, and the criminal history category is V.

10 I should mention that there's been some email exchange
11 between my office and probation. In some documentation,
12 probation had said that there was a five-year consecutive
13 sentence for Count Three. We believe it should be then.

14 We did get an email back from probation that said that
15 they had erred in that regard, and it is ten years and not five
16 years as the consecutive mandatory minimum.

17 In considering the factors at 18 U.S. Code, Section
18 3553(a), these points stand out. Mr. Smith pled guilty on or
19 about December 14, 2015, to a three-count superseding
20 information, and he pled pursuant to what's called a Pimentel
21 letter.

22 He pled guilty to three offenses, and they are
23 conspiracy to commit Hobbs Act robbery, conspiracy to
24 distribute and possess with the intent to distribute
25 5 kilograms and more of cocaine, and discharge of a firearm

1 during and in relation to a drug-trafficking crime and crime of
2 violence, which, in this instance, caused the death of a man
3 named Danny Ulerio Laura.

4 It was Mr. Smith who shot Mr. Laura during his drug
5 robbery in which defendant and others were robbing or
6 attempting to rob Mr. Laura of his drugs.

7 Mr. Smith is 41. He'll be 42 at the end of August.
8 He has a GED degree. Single. No children. He has a prior
9 criminal history which includes a conviction for manslaughter
10 in the first degree, attempting to elude the police, and
11 robbery.

12 Indeed, I think he's currently serving a 41-month
13 sentence of imprisonment for the robbery under 11 CR 294, a
14 case heard by Judge Buchwald.

15 Mr. Smith has some mental health issues and history,
16 as well as a disciplinary record while incarcerated. Probation
17 states that Mr. Smith has no juvenile adjudications, but
18 defense counsel did advise that he spent some time at Spofford
19 Juvenile Detention Facility in the Bronx as a juvenile which
20 normally is attendant upon family court criminal proceedings,
21 juvenile delinquency proceedings.

22 Probation classifies defendant as a career offender,
23 but the government contends that defendant does not qualify as
24 a career offender because one of the so-called "qualifying
25 convictions" relied upon by probation was committed after the

1 instance offense.

2 I agree that the defendant is not determined to be a
3 career offender. Under United States Sentencing Guidelines
4 4B1.2, the defendant must have committed the offense of
5 conviction subsequent to sustaining at least two felony
6 convictions of either a crime of violence or a
7 controlled-substance offense in order for the conviction to
8 qualify as a prior felony conviction.

9 The offenses in this case occurred prior to the
10 robbery conviction, which is a predicate for a career offender,
11 a sought to be predicate. That robbery conviction does not
12 qualify as a prior felony conviction for purposes of
13 classifying the defendant as a career offender.

14 Defendant was raised primarily by his mother and
15 stepfather. His father died when he was young, and his mother
16 suffered from considerable mental health issues, including
17 bipolar disorder.

18 Probation states that Mr. Smith suffers from health
19 issues, including asthma, allergies, deviated nasal septums and
20 seizures. Probation says defendant suffers from breathing
21 issues which are exacerbated by weight gain.

22 Probation says also that defendant has a lengthy
23 history of mental health illness which went undiagnosed for
24 years, including diagnoses of schizophrenia, bipolar disorder,
25 and depression.

1 It's also reported that Mr. Smith has attempted to
2 commit suicide and has experienced psychotic episodes while in
3 BOP custody. He's presently under the care of mental health
4 professionals at MDC and has been prescribed Trazodone and
5 another drug which I'm not familiar with called haloperidol.

6 According to probation, at the age of 14, Mr. Smith
7 became part of a car theft crew presumably led by a crack
8 dealer named Clint, and he used the proceeds of that theft to
9 buy expensive items.

10 Probation says that defendant began consuming alcohol
11 with his friends at the age of 12 and at 13 began smoking
12 marijuana. By the age of 15, he was smoking up to 20 times a
13 day and snorting cocaine and has also used ecstasy.

14 Defense counsel advised the Court that defendant's
15 substance abuse included alcohol, marijuana, cocaine, and angel
16 dust and reported that defendant would party for days, crash,
17 and then begin that same cycle over again.

18 At one time Mr. Smith worked for a tire repair shop.
19 Defense counsel says this employment was for a two-month period
20 after defendant's release from state custody.

21 By letter dated June 6, 2016, defense requests a
22 sentence between the mandatory minimum required by statute and
23 the bottom end of the applicable guideline range under the
24 advisory sentencing guidelines.

25 I take it to be a request for a sentence of 30 years.

1 Is that a way to interpret that application?

2 MR. MOSKOWITZ: Yes, your Honor.

3 THE COURT: Defense counsel details the defendant's
4 upbringing and that of his mother, including his mother's
5 mental health issues and the loss of his father. And defense
6 counsel describes in detail the defendant's mental health
7 history and the psychiatric episodes that he has experienced.

8 Defense counsel also notes that defendant takes
9 prescribed medication as I mentioned. And when he does, he can
10 be calm and stable. He has a pattern, however, of not taking
11 his medication when he feels well enough as he thinks the
12 medication is not necessary at such periods of time.

13 Defense states, "As James has shown at various points
14 in his life when he is properly medicated, he is an affable
15 person who can act responsibly and contribute to society. When
16 not in the throes of a manic episode, James was able to
17 complete numerous vocational courses while in custody, complete
18 also his GED, and even serve as a facilitator in a violence
19 prevention program in the state prison system."

20 By a submission dated June 30, 2016, the government
21 requests a sentence within the guideline range of 360 months to
22 life, which, according to the government, "Appropriately
23 captures the defendant's substantial criminal history and, more
24 significantly, his conduct and role in this robbery turned
25 murder."

1 The government agrees with the defense that the murder
2 of Mr. Laura was not premeditated. "In fact, all of the
3 government's evidence indicates that the plan was to rob Laura
4 of his drugs and not to kill him." That's a quote from the
5 government's submission.

6 Another quote is that the government "also submits
7 that the defendant did not orchestrate the robbery. He was a
8 member of the robbery crew but by no means the leader.
9 However, the fact remains that the defendant callously took
10 away the life of another individual for the second time.

11 "Sixteen years prior to this murder, the defendant
12 shot and killed another individual named Carlos Hernandez in
13 the Bronx during a dispute with his cousin."

14 The government also notes that 12 days after the
15 murder of Mr. Laura, the defendant was arrested in a DEA sting.
16 That's the Judge Buchwald case. The government states, "Sadly,
17 the defendant has not demonstrated that he is capable of living
18 in a society without committing, not only crimes, but extremely
19 violent and deadly crimes."

20 I've also reviewed the presentence investigation
21 report dated March 7, 2016, with the sentencing recommendation
22 and addendum of the same date and the letters from counsel,
23 Mr. Moskowitz and Ms. Glavin, dated June 6, 2016, and 6-30-16
24 from the government.

25 Have defense counsel and Mr. Smith had the opportunity

1 to read and discuss the presentence investigation report, the
2 addendum, and the sentencing recommendation?

3 MS. GLAVIN: Yes, your Honor.

4 THE COURT: Mr. Smith, you've been over those
5 materials with your counsel?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do either of you or any of you have
8 remaining objections to the presentence report?

9 MS. GERACI: Your Honor, I've spoken with defense
10 counsel. We just have three things, two of which your Honor
11 already touched on. The first one is new.

12 Paragraph 46 of the PSR indicates that during this
13 robbery/sting operation, the defendant and his coconspirators
14 were found in possession of a firearm.

15 It turns out upon further review of that operation,
16 they were not found to be in possession of a firearm. Rather,
17 they were found to be in possession of this tire jack without a
18 handle. That is also referenced at paragraph 46. So we just
19 wanted to clarify that for the Court. Defense counsel is in
20 agreement with that as well.

21 THE COURT: So what language is incorrect in paragraph
22 46?

23 MS. GERACI: It's the fourth line down, your Honor,
24 "Smith and his coconspirators were found in possession of a
25 firearm."

1 THE COURT: So should that be struck?

2 MS. GERACI: Yes. Correct, your Honor.

3 THE COURT: Okay.

4 MS. GERACI: Your Honor, I've spoken with defense
5 counsel. Apparently page 21 of the PSR also makes a reference
6 to that firearm. The third paragraph down, your Honor, I
7 believe the second sentence.

8 THE COURT: The third paragraph, the sentence
9 beginning, "While still under"?

10 MS. GERACI: Just one moment, your Honor.

11 (Pause)

12 MS. GERACI: On page 21, your Honor, we're looking at
13 the third paragraph down, the third that begins, "Smith poses a
14 serious risk."

15 THE COURT: Right.

16 MS. GERACI: Three lines below that sort of in the
17 middle of the line it says, "Smith engaged in two armed robbery
18 conspiracies, possessed firearms." I believe that that may
19 relate to the sting operation. And, to the extent it is, we
20 would just have your Honor note that that sting operation did
21 not possession of a firearm.

22 THE COURT: This says, "two armed robberies.
23 Possessed firearms."

24 MS. GERACI: So it really should be he possessed a
25 firearm in one armed robbery. The other robbery was not armed.

1 I suppose it could also have read, "Engaged in robberies.

2 Possessed a firearm."

3 THE COURT: So I've changed my copy to read,
4 "Possessed a firearm in one of the robberies." Is that
5 accurate?

6 MS. GERACI: That's fine for the government,
7 your Honor.

8 MR. MOSKOWITZ: Yes, your Honor.

9 THE COURT: Okay.

10 MS. GERACI: The other two items in the PSR that
11 your Honor already addressed, in paragraph 49 it notes that
12 defendant is a career offender. I think we've clarified that
13 for the Court. Paragraph 82 is the statutory provision where
14 they mistakenly note that the minimum --

15 THE COURT: Hold on before you get to that. So how do
16 you want to change 49?

17 MS. GERACI: I believe, if you just cut the line after
18 the criminal history score is 11 and sort of end with,
19 therefore, the criminal history category is V instead of VI.

20 THE COURT: No. I don't get it. So you're on
21 paragraph 49, "The defendant is a career offender because he
22 was at least --" that should come out; right?

23 MS. GERACI: Correct, your Honor. My proposal is to
24 strike that whole section about being a career offender.
25 Perhaps it could read, "The total criminal history score is 11.

1 Therefore, the criminal history category is V."

2 THE COURT: Is that okay with defense?

3 MS. GLAVIN: Yes, your Honor.

4 THE COURT: So you want to delete the balance of line
5 1, all of line 2, all of line 3, and line 4 up to "Therefore."
6 Is that right?

7 MS. GERACI: Yes, your Honor. And then change the
8 criminal history category as they have it listed.

9 THE COURT: Therefore, the criminal history
10 category --

11 MS. GERACI: It should be V. They have it becomes VI
12 because of the career offender.

13 THE COURT: "is V."

14 MS. GERACI: Yes, your Honor.

15 THE COURT: And then the last one?

16 MS. GERACI: The last one is paragraph 82, the
17 statutorily provided custody provision. The provision under
18 Count Three, paragraph 82, should be the minimum term of
19 imprisonment is ten years.

20 THE COURT: Instead of five?

21 MS. GERACI: Yes, your Honor.

22 THE COURT: Okay.

23 MS. GERACI: That's all I have, Judge. Thank you.

24 THE COURT: Then, defense counsel, apart from these
25 modifications, do you have any objections to the presentence

1 report?

2 MS. GLAVIN: No, your Honor.

3 THE COURT: And you agree with the modifications that
4 we just made?

5 MS. GLAVIN: Yes, your Honor.

6 THE COURT: How about, Mr. Smith? Do you have any
7 further objections?

8 THE DEFENDANT: No. No, your Honor.

9 THE COURT: I will return the report to probation.
10 I'm happy to hear from defense counsel, Mr. Smith, and the
11 government at this time.

12 MR. MOSKOWITZ: Thank you, your Honor. Your Honor
13 took away a lot of my thunder by talking about those facts that
14 we just --

15 THE COURT: I'm just trying to save a little attorney
16 wear and tear.

17 MR. MOSKOWITZ: Thank you, your Honor. Let me focus
18 my presentation on how we would emphasize the significance of
19 the various facts that your Honor spoke about.

20 I begin by stating the obvious. This is a difficult
21 case and I would suggest to the Court really is a tragic case
22 from everybody's perspective.

23 First of all, it's tragic because there was a
24 senseless loss of life in a botched drug robbery. There's no
25 excuse for it. There's no justification.

1 Having said that, it is important to note, as
2 your Honor did and as the government did, that this was not a
3 situation that was premeditated. Certainly nobody intended
4 that to happen. It happened. There's just no excuse for it.
5 It is tragic, and it's senseless.

6 When we look at it and we look at Mr. Smith, I also
7 suggest that there's another tragedy here, and that is in many
8 respects, Judge, Mr. Smith sitting here, if not in this case in
9 some other case, was almost predictable in that it is the
10 result of a horrific upbringing and the terrible personal
11 background and the serious, untreated, undiagnosed mental
12 health problems that he's had virtually from the outset.
13 Certainly from adolescence.

14 As I was thinking about this coming over here, I would
15 say to the Court there can be little doubt that if Mr. Smith
16 had grown up in a more stable, healthier, functional household
17 with parents that are capable of taking care of him, guiding
18 him, being parents, his mental health problems would have been
19 diagnosed. They would have been treated. Maybe he would have
20 had a chance at life, if his parents were capable of parenting
21 him. By that I include not only his mentally ill mother but
22 his absent father and his absent stepfather.

23 Had any of them been able to parent him, he would not
24 have been out on the streets as a 12-, 13-, 14-year-old. And
25 he wouldn't have ended up making the associations that he made.

1 He might have gotten an education, and he might have had a
2 chance at life.

3 Unfortunately, none of that happened. The home that
4 he grew up in was tragically dysfunctional. His life,
5 beginning in adolescence, took a path that we who are in the
6 business are all too familiar with. I'm sure your Honor has
7 seen many of these cases. I certainly have from my years doing
8 murder cases and death penalty cases in this courthouse.

9 What is also clear, Judge, is that there's no
10 question, given the nature of the crime, given Mr. Smith's
11 background and criminal history, that a significant sentence is
12 warranted. We don't run away from that. What we do dispute is
13 the inclusion of the probation department that the appropriate
14 sentence here is life in prison.

15 I think, Judge, that we as a society have come to
16 realize that sentencing mentally ill people to life in prison
17 is really not appropriate, assuming they can be treated and
18 that there is some hope that they can become law abiding and
19 productive.

20 I think that although James' history of treatment is
21 sporadic and hasn't been consistent and he has often stopped
22 taking the medications that make him stable, he has shown that
23 when he is medicated and when he is appropriately treated, he
24 can be law abiding, he can be productive, and he would not be
25 dangerous.

1 What I suggest to the Court -- and what Ms. Glavin has
2 suggested to the Court -- is that a sentence in the 20-year
3 range, which is between the mandatory minimum and the low end
4 of the guidelines, would be appropriate in this case because it
5 would allow for an appropriate sentence for the crime that was
6 committed.

7 It would give Mr. Smith an opportunity to have a
8 lengthy period of time under supervision where he is going to
9 be treated, is going to be medicated, and he would get used to
10 that regiment. That would give us hope and optimism that when
11 he gets out, he would be able to continue in that vein.

12 THE COURT: Is there that resource during
13 incarceration?

14 MR. MOSKOWITZ: What I was going to suggest to the
15 Court towards the end of this -- but I'll address it now -- is,
16 yes. There are numerous medical facilities. The ones that I
17 am familiar with, the closest one to the New York area, is
18 Devens where he can be treated. There's another one in Butner,
19 North Carolina. There's another one in Springfield, Missouri.

20 All of those places have the facilities to evaluate
21 and treat Mr. Smith appropriately. I was going to ask for the
22 Court at the end, whatever the sentence is, that the Court
23 direct or recommend -- I know the Court can't direct but can
24 recommend that he be in a facility where he can get that type
25 of treatment. He clearly needs it, and it is clearly

1 appropriate.

2 THE COURT: Is he getting it now?

3 MR. MOSKOWITZ: He is getting medication now. He's
4 been on it. He actually was in a unit that was, as I
5 understand, operated by the mental health -- I guess it's a
6 psychologist -- at the MDC. That recently was shut down. So
7 he's been moved back to a more regular unit.

8 I think clearly he does well when he can get the
9 treatment, and clearly we are asking the Court to make that
10 recommendation.

11 I know that the real issue here for the Court and for
12 everybody is well, is there a chance that he can get out and
13 not be dangerous. I believe, your Honor, that given a lengthy
14 period of time where he is medicated and stabilized and becomes
15 familiar and accepting of the routine, yes. There is reason to
16 believe that.

17 I note to the Court that given Mr. Smith's age, if the
18 Court gives him a sentence in the range that we are suggesting,
19 he's going to get out. He's going to be somewhere in his 60's
20 at a time when all of the studies show people tend to be much
21 less likely to commit crimes.

22 One more point I want to make. I made it in our
23 letter to the Court. Mr. Smith made the decision to plead
24 guilty to the charges knowing that the Court could sentence him
25 to life but hoping that the Court would choose not to.

1 In so doing, he accepted responsibility, and he saved
2 this Court and the government significant time and resources.
3 That should count for something. I don't know how the Court
4 can evaluate that, but I suggest to the Court that if the Court
5 were to follow the probation department's recommendation and
6 sentence Mr. Smith to life, that would be sending a
7 nonproductive and unhelpful message to similarly situated
8 defendants which says, it doesn't matter if you plead, if you
9 accept responsibility, there's a good chance you're going to
10 end up with a life sentence.

11 THE COURT: In this instance, I absolutely agree with
12 that.

13 MR. MOSKOWITZ: So, Judge, in sum, I ask the Court to
14 accept our recommendation, give him a sentence in that range
15 that is somewhere from the mandatory minimum to the low end of
16 the guideline range.

17 Give Mr. Smith the hope that if he survives that
18 sentence, which, by the way, we are in the business -- we throw
19 around numbers. Sometimes we lose perspective on just how long
20 it is.

21 A 20-year sentence, a 25-year sentence, a 30-year
22 sentence -- that is an enormous amount of time. It needs to be
23 recognized, and we have to take a step back. It's hard for me
24 to imagine that I'm standing here advocating for a sentence in
25 that range, but I am, with the full understanding that it

1 really is a very long time. I know your Honor appreciates that
2 too.

3 A sentence in that range would, I think, satisfy all
4 of the elements or the factors under 3553(a) and would give
5 Mr. Smith a chance at some semblance of a life when he gets out
6 and at a time where I don't believe he would any longer
7 represent a danger to society.

8 Thank you, your Honor.

9 THE COURT: Thank you.

10 Mr. Smith, would you like to make a statement?

11 THE DEFENDANT: Yes. I would like to make a
12 statement. First and foremost, I would like to pay my respects
13 to the family, you know. I feel that I caused them a lot of
14 pain. I never meant this to happen. It just happened.

15 It was quick. I can't really explain it. It just
16 happened. I just feel really bad for the family. I just wish
17 I could change what happened that day. I just wish -- every
18 day I deal with it, and it's hard. Every day I go through it.
19 What happened that day wasn't supposed to happen.

20 I know I can't change things. It's already done.
21 Life is short. If you make a mistake, you have to do your
22 time. You have to pay for your mistakes. That's all I've got
23 to say, your Honor.

24 THE COURT: How about the government?

25 MS. GERACI: Your Honor, the government rests on its

1 submission.

2 THE COURT: Then I'm going to adopt the findings of
3 fact in the presentence report as we have modified it today
4 unless defense counsel has any further objections.

5 MR. MOSKOWITZ: Your Honor, it's not an objection, but
6 I would note your Honor had mentioned earlier about the prior
7 case and the fact that he got a sentence, I believe, of 41
8 months.

9 It's our understanding, Ms. Glavin and I, that given
10 the time that was left on that sentence at the time that he was
11 brought over here, that sentence, as we calculate it, should
12 have run out by now.

13 So, in calculating whatever sentence your Honor is
14 giving, I don't think the issue of whether it's concurrent or
15 consecutive to that time should play in.

16 THE COURT: You don't think it applies?

17 MR. MOSKOWITZ: No. Ms. Glavin represented Mr. Smith
18 in the original case. He had a 41-month sentence. He went in
19 in February of 2011. So by all calculations, it should be
20 done.

21 THE COURT: Any further objections from Mr. Smith?

22 MR. MOSKOWITZ: No, your Honor.

23 THE DEFENDANT: No, your Honor.

24 THE COURT: How about from the government?

25 MS. GERACI: No, your Honor.

1 THE COURT: So let's preview what the sentence is
2 going to be here. I intend to impose a sentence not quite what
3 Mr. Moskowitz has added for but a total sentence that will come
4 to 34 years. So that's 24 on Counts One and Two plus 10
5 mandatory consecutive. That's how I'm doing the math. That is
6 a substantial sentence obviously. But, as I'll explain, I
7 think it's warranted by a review of the 3553(a) factors.

8 That would be followed by five years of supervised
9 release, and they would be subject to the mandatory conditions
10 that defendant not commit another federal, state, or local
11 crime; that he not illegally possess a controlled substance;
12 that he not possess a firearm, dangerous weapon, or destructive
13 device; and that he refrain from any unlawful use of a
14 controlled substance.

15 He'd be required to submit to one drug test within 15
16 days of placement on supervision and at least two unscheduled
17 drug tests thereafter as may be directed by the probation
18 officer.

19 In addition, he'd be required to comply with what are
20 called standard conditions 1 through 13 plus the following:

21 That he be supervised in his district of residence and
22 that he report to probation within 48 hours of release from
23 custody and that he participate in a program approved by the
24 probation department for a substance abuse which program shall
25 include testing to determine whether he has reverted to the use

1 of drugs or alcohol.

2 He may be required to contribute to the cost of
3 services rendered as by a copayment in an amount to be
4 determined by the probation officer based on such factors as
5 ability to pay or availability of third-party payment.

6 In addition, he is required to participate in weekly
7 therapeutic counseling by a licensed therapist during that
8 five-year period of supervised release and may be required to
9 contribute to the costs of services rendered as by a copayment
10 in an amount to be determined by the probation officer.

11 I don't intend to impose any fine. Nor do I intend to
12 impose restitution. I do intend to impose a \$300 special
13 assessment, which is mandatory and due immediately.

14 Briefly, the reasons for this sentence are that the
15 offense level is 40, and the criminal history category is V.
16 The guideline range in fact is 360 months to life imprisonment
17 plus 10 consecutive mandatory minimum for Count Three.

18 I believe this sentence is appropriate given the
19 seriousness of the offense, the needs for punishment and
20 deterrence. I've considered the nature and circumstances of
21 the offense and also the compelling history and characteristics
22 of Mr. Smith.

23 I think this sentence reflects the seriousness of the
24 offense, promotes respect for the law, provides just
25 punishment, affords adequate deterrence to criminal conduct,

1 protects the public from further crimes, and provides defendant
2 with needed educational or vocational medical care and, in
3 particular, mental healthcare or other correctional treatment
4 in the most effective manner.

5 So I will make a recommendation that Mr. Smith be
6 housed at a medical facility that is able to evaluate and treat
7 particularly these mental health issues.

8 So, defense counsel, do you wish to say anything
9 before I impose the sentence?

10 MR. MOSKOWITZ: No, your Honor.

11 THE COURT: Mr. Smith, anything further?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: How about Ms. Glavin?

14 MS. GLAVIN: No, your Honor.

15 THE COURT: The government?

16 MS. GERACI: No, your Honor.

17 THE COURT: If you would please stand, Mr. Smith.

18 The guideline range, given all the factors that are
19 relevant, is 360 months to life plus 10 years consecutive
20 sentence. Having considered the factors at 18 U.S. Code,
21 Section 3553(a), it is my judgment that James Smith be
22 committed to the custody of the Bureau of Prisons to be
23 imprisoned for a term of 34 years. That's 24 for Counts One
24 and Two and 10 consecutive for Count Three.

25 That's followed by five years of supervised release on

1 the terms and conditions that I mentioned before and
2 incorporate here by reference, both the mandatory and the
3 special conditions. I'm not imposing a fine. I'm not imposing
4 restitution. I am imposing a \$300 special assessment.

5 As I said before, the reasons for this sentence are
6 that I believe that the sentence is appropriate and compatible
7 with the criteria at 18 U.S. Code, Section 3553(a),
8 particularly the seriousness of the offense, the needs for
9 punishment and deterrence, and also the need to provide
10 appropriate medical and mental healthcare, among others. I
11 incorporate that discussion from before here by reference.

12 Does either counsel know of any legal reason why the
13 sentence should not be imposed as so stated?

14 MS. GERACI: No, your Honor.

15 MR. MOSKOWITZ: No, your Honor.

16 THE COURT: Then I hereby order the sentence to be
17 imposed as so stated.

18 Mr. Smith, you have the right to appeal this sentence.
19 If you are unable to pay the costs of an appeal, you have the
20 right to apply for leave to appeal in forma pauperis.

21 If you request, the clerk of court will prepare and
22 file a notice of appeal on your behalf immediately.

23 Do you understand your appeal rights?

24 THE DEFENDANT: Yes.

25 THE COURT: Any open counts the government will seek

1 to resolve at this time?

2 MS. GERACI: Yes, your Honor. At this time the
3 government moves to dismiss the various underlying indictments
4 against defendant.

5 THE COURT: I grant that application. Starting with
6 the government, do you wish to add anything to today's
7 sentencing proceeding?

8 MS. GERACI: No, your Honor.

9 THE COURT: The defense?

10 MR. MOSKOWITZ: No, your Honor.

11 THE COURT: Mr. Smith, I think that finishes our work
12 here today. I really wish you the best of luck going forward.
13 Thanks very much.

14 MS. GLAVIN: Thank you, your Honor.

15 (Adjourned)

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